



NATIONAL MEDIATION BOARD
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31 NMB No. 83
May 13, 2004

Hank Breiteneicher
Acting Solicitor
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20571-0001

Re: NMB File No. CJ-6810
Aircraft Service International Group, Inc.

Dear Mr. Breiteneicher:

This letter responds to your request for the National Mediation Board's (NMB) opinion regarding whether Aircraft Service International Group, Inc. (ASIG) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On December 10, 2003, the National Labor Relations Board (NLRB) requested an opinion regarding whether ASIG's operations at its facility at the Detroit Metropolitan Airport (Detroit) are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that ASIG's operations and its employees at Detroit are subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by the International Union of Operating Engineers, Local 324 (Operating Engineers), and the ASIG Employees Association (Association or together with the Operating Engineers as Organizations), on October 17, 2003, with the NLRB seeking to amend the certification issued in NLRB Case No. 7-RC-22390. Previously, on March 17, 2003, the NLRB certified the Association as the exclusive bargaining representative of the following employees: "[a]ll full-time and regular part-time

fuelers, GSE fuelers, GSE mechanics, and quality control technicians employed by the Employer at its facility at Detroit Metropolitan Airport, currently performing work for Northwest Airlines, KLM Airlines, Mesaba Airlines, Pinnacle Airlines and Champion Airlines. . . .” On August 4, 2003, the members of the Association voted to affiliate with the Operating Engineers. Subsequently, the Organizations filed the petition in the instant case seeking to amend the certification to reflect the Operating Engineers as the exclusive bargaining representative of the employees.

A hearing was held in NLRB Region 7 on November 4, 2003. On December 10, 2003, the NLRB requested an NMB opinion regarding the NMB’s jurisdiction over ASIG’s Detroit operations. On December 17, 2003, the NMB assigned Maria-Kate Dowling to investigate. The participants filed their respective submissions with the NMB on December 29 and December 30, 2003.

The NMB’s opinion in this case is based upon the request and record provided by the NLRB including the hearing transcript provided by the NLRB and the position statements submitted by ASIG and the Organizations.

II. ASIG’S CONTENTIONS

ASIG notes that the parties have stipulated that it meets the function part of the two-part test established by the NMB for determining jurisdiction of employers that are not owned by or under common ownership with an RLA carrier. ASIG contends that it also meets the control part of the test since every aspect of its operation at Detroit including the manner in which its employees perform their jobs is dictated and controlled by Northwest Airlines and its affiliated carriers, KLM Airlines, Mesaba Airlines, Pinnacle Airlines and Champion Airlines (referred to collectively as Northwest or Carriers).

ASIG has a “cost-plus” contract with Northwest, which Northwest can terminate on a 30-day notice with or without cause. Under this contract, Northwest approves and pays for ASIG’s direct and indirect costs associated with the work performed, including wages, benefits, equipment, parts, materials, utilities, relocation expenses and office supplies. Accordingly, ASIG contends that its failure to satisfy Northwest with respect to either performance or costs can lead to cancellation of the contract.

ASIG also contends that the number of its employees as well as the length and timing of their shifts is dictated wholly by the carriers. ASIG further contends that the Carriers control the manner in which ASIG employees perform their duties since ASIG employees are trained according to and must abide by specific procedures approved by the Federal Aviation Administration (FAA). The Carriers audit ASIG for compliance with these procedures. ASIG also asserts that the Carriers affect ASIG’s hiring and other employment decisions.

III. OPERATING ENGINEERS AND ASSOCIATIONS’ CONTENTIONS

The Organizations assert that the control exercised by the Carriers over ASIG’s operations through its contract with Northwest is insufficient to establish RLA jurisdiction. The Organizations contend that although the contract between ASIG and Northwest is a “cost-plus agreement,” Northwest does not approve or otherwise control wage or benefit increases for ASIG employees. The Organizations further contend that ASIG, not the Carriers, decides whether certain equipment is needed to properly perform and carry out various tasks. While a Northwest representative might suggest the purchase or use of certain equipment, the ultimate decision rests solely with ASIG.

The Organizations also argue that Northwest plays no role in ASIG’s personnel decisions. Although staffing decisions are related to some degree to the Carriers’ schedules, the Organizations argue that since ASIG’s business involves providing a service to its customer, it has to accommodate the

customer's schedule. Northwest representatives did not participate in ASIG's initial hiring process. Northwest also exercises no control over discipline. According to the Organizations, ASIG conducts its own review and investigations of employee misconduct and applies its own disciplinary rules. Finally with regard to employee training, the Organizations contend that any control is exercised by the FAA and not Northwest.

IV. FINDINGS OF FACT

ASIG

ASIG, founded in 1947, provides aviation fueling, ground handling, and other aircraft and passenger services. In September 2000, ASIG began performing fueling services for Northwest at Detroit. Specifically, ASIG began fueling Northwest's main aircraft as well as the aircraft of KLM and Champion. This work had previously been performed by ASIG's competitor, Signature Flight Support (Signature), which continued to perform fueling for the other Affiliated Carriers after September 2000. In July 2001, Signature's parent company, BBA Group PLC, acquired ASIG and shortly thereafter ASIG assumed the fueling work for Mesaba Airlines and Pinnacle Airlines from Signature.

Nature of Work for ASIG Employees

The majority of the employees at issue are fuelers, whose responsibility is transferring fuel on to the aircraft. The remaining employees are mechanics who maintain the equipment used by the fuelers and quality control employees who ensure the quality of the fuel. At the hearing, the parties stipulated that the work performed by ASIG employees is the type of work traditionally performed by employees of air carriers.

Carrier Control over ASIG's Operations and Employees

ASIG performs work for Northwest pursuant to a single "into-plane*" fueling contract. ASIG has no other customers in Detroit. The contract is a "cost plus" contract which requires Northwest to reimburse ASIG's direct and indirect costs for work under the contract and to pay ASIG a monthly management fee. The contract runs for 10 years with an option for the parties to mutually agree to extend its term for another 10 years but Northwest retains the right to terminate the agreement, "without cause, for convenience," with 30-days notice.

The contract specifies both reimbursable direct and indirect costs. General reimbursable direct costs cover the majority of day-to-day operating expenses, including salaries, wages and fringe benefits. Direct costs would also include the maintenance costs, including materials used to maintain equipment operated by ASIG, the parts required to repair that equipment and the costs of any repairs that need to be contracted out. Finally, direct costs also include utilities, moving or relocation expenses and office supplies. Reimbursable indirect costs refer to other charges and expenses reasonably incurred by ASIG that relate directly to the operation and management of the contract in Detroit.

ASIG prepares a budget on an annual basis and submits it to Northwest. Northwest reviews the budget and either approves the costs or requests revision. Every month, ASIG submits an invoice to Northwest outlining the previous month's costs including a comparison of the actual costs for the month to the budgeted costs for that month. Where the actual cost exceeds the budgeted cost, ASIG provides a written explanation for the difference. Northwest can seek a clarification or dispute charges on the invoice. After discussion between ASIG and Northwest, Northwest either agrees to the charge or ASIG

* According to Shannon Carney, an ASIG employee and former General Manager of Detroit Operations, "into-plane" fueling is the term for putting jet fuel into airplanes.

removes it. While Northwest does not set the wages and benefits of ASIG employees, it does approve in advance the parameters of employee wage increases. For example, in 2000, Northwest approved an “upper limit” for wages that were the subject of collective bargaining between ASIG and the representative of unit employees. Following the decertification of that representative in 2001, Northwest approved in advance the wage increase given to employees. Further, Northwest approved in advance ASIG’s decision in late summer 2002 to assume a greater percentage of the cost of employee health insurance.

Hiring Procedures

With regard to ASIG’s initial hiring, Northwest identified approximately seven to 10 Signature employees that it did not want ASIG to hire. ASIG did not hire these individuals. Otherwise, Northwest did not participate in the hiring process and ASIG established and applied its own hiring standards. ASIG based the number of employees it hired as well as the staffing level of each shift at Detroit on the Northwest flight schedule. In the 2004 budget, Northwest wanted the number of allocated fuelers decreased from 86 to 80 and ASIG complied. ASIG also sought Northwest’s approval to upgrade an hourly position to a salaried management position. When it approved ASIG’s plan to hire a Fuel Accountant, Northwest instructed ASIG regarding certain requirements for the position, namely past accounting experience and Excel spreadsheet skills.

Authority to Remove or Discipline ASIG Employees

The Carriers have no authority to directly remove or impose discipline on ASIG employees. The Carriers do, however, report unsatisfactory performance or conduct of ASIG employees to ASIG management. On several occasions, Northwest employees have reported ASIG employees for failing to follow Northwest procedures in the airline manual. These ASIG employees received verbal counseling and recurrent training. In another instance, an ASIG employee was

reassigned from ramp work and received a three-day suspension based on his interaction with security personnel and a Northwest manager. Another incident involved an ASIG fueler who engaged in a verbal altercation with a Pinnacle Airlines employee; Pinnacle requested that the ASIG employee not fuel their flights. ASIG removed the fueler from Pinnacle flights for 30 days and then sought and got his reinstatement as a fueler for Pinnacle. Northwest personnel reported another incident involving an ASIG employee and carrier security personnel. After an investigation, ASIG suspended and subsequently terminated the employee. On two or three other occasions, an ASIG employee received formal counseling after a complaint by a Northwest manager. In these instances, a Northwest manager would contact ASIG verbally or in writing to identify a problem and ask how the problem would be addressed. After conducting an independent investigation, ASIG would notify Northwest whether discipline was imposed under ASIG's internal rules. If an ASIG employee damaged Northwest equipment, Northwest and ASIG would conduct parallel investigations. Northwest has the right to interview ASIG employees during these investigations.

Work Scheduling

The schedules of the Carriers dictate the hours worked by ASIG employees. ASIG adjusts its employees' work schedules to maintain proper staffing for flights. For example, if the Carriers have more morning flights scheduled, ASIG will schedule more employees in the morning. If Northwest's flight schedule changes, ASIG adjusts its employees' schedules accordingly.

Supervisory Authority

ASIG's operations are run on a day-to-day basis from the Control Center by its Control Center Coordinator. This employee is in direct communication with the Northwest employees and the ASIG employees on the ramp regarding flights and fuel loads.

Each Carrier provides ASIG with instructions regarding how much fuel to load on each aircraft. The Carriers may also direct ASIG employees to stop loading one aircraft and load another if needed, such as when flights are changed. For example, Northwest will notify ASIG that a particular aircraft on a gate needs to be de-fueled. In response, ASIG determines whether employees are immediately available to handle the request. If ASIG does not have employees available, Northwest will determine whether or not to pull ASIG employees off a flight preparing to depart in order to make the gate available. Northwest has also requested that only ASIG supervisors or "best of fuelers" work on international flights with direct oversight by a Northwest supervisor because of recent problems. Further, Northwest has added the requirement that ASIG de-fuel DC-9 aircraft prior to moving the aircraft to the hangar.

Northwest also approves and reimburses ASIG for rewards to ASIG employees for exceptional performance with ice cream socials, pizza and splitting the cost with ASIG of supermarket gift cards. Northwest also rewarded an ASIG employee, who prevented aircraft damage, with two complimentary airline tickets.

ASIG Attendance at Carrier Meetings

ASIG's General Manager attends Northwest's daily operational meeting which provides a recap of the previous day's performance and briefing regarding the current day's operational issues. ASIG's Training and Safety Manager attends Northwest's monthly safety meeting. ASIG employees also interact with Northwest employees on joint safety committees.

Training

Each carrier requires that ASIG employees undergo specific training. ASIG employees are trained by Northwest under a “Train the Trainer” program and are then authorized to administer training to new ASIG employees. Training consists of classroom instruction and on-the-job training. The certification of employee training is done on Carrier forms and the records are maintained at the base by ASIG and by Northwest.

Audits

The Carriers send copies of their operating procedure manuals to ASIG and require that ASIG maintain and update these manuals. The Carriers review the maintenance of these manuals during annual audits. Northwest is not required to give advance notice of an audit. During the audit, the Carrier also reviews the training records for selected groups of employees. The Carriers will also inspect the fueling equipment and observe employees while they work. At the end of an audit, the Carrier will have a verbal conference with ASIG and, if necessary, send a written report detailing any discrepancies. If discrepancies exist, ASIG must respond with a written response identifying the corrective action that will be taken.

Equipment

With the exception of permanent fixtures used in the fueling and leased vehicles, almost all of the equipment used by ASIG is owned by Northwest. Northwest pays a rental fee to reimburse ASIG’s costs for ASIG-owned equipment. On occasion, Northwest specifies certain equipment that it wants ASIG to purchase. ASIG has never refused to make such a purchase. However, most of the time, ASIG would make an internal management decision that certain equipment purchases were necessary for proper performance of the contract. If the purchase cost was outside the year’s budgeted capital expenditures, ASIG would contact Northwest and

inform them of the intended purchase. Northwest would review the purchase and might ask that the purchase be delayed for budgetary reasons.

V. DISCUSSION

Applicable Legal Standard

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB applies a two-part test in determining whether the employer and its employees are subject to the RLA. *Signature Flight Support of Nevada*, 30 NMB 392 (2003). First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *Signature Flight Support, above*. See also *AvEx Flight Support*, 30 NMB 355 (2003).

ASIG does not fly aircraft and is not directly or indirectly owned by an air carrier. The parties stipulated that ASIG employees perform work that is traditionally performed by employees of rail or air carriers. Therefore, to determine whether ASIG is subject to the RLA, the NMB must consider the degree of control exercised by its air carrier customers.

Carrier Control Over ASIG and Its Employees

To determine whether there is carrier control over a company, the NMB looks to several factors, including: the extent of the carriers' control over the manner in which the company conducts its business; access to company's operations and records; role in personnel decisions; degree of supervision of the company's employees, and; control over employee training. *Signature Flight Support, above*. *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003); *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft*

Support, 21 NMB 78 (1993); *Ogden Aviation Servs.*, 20 NMB 181 (1993).

The Carriers exercise substantial control over ASIG's operations at Detroit. The Carriers are ASIG's only customers in Detroit. The Carriers own almost all of the equipment used by ASIG and reimburse ASIG for the rental costs for its facilities at Detroit. The Carriers' schedules dictate the staffing levels and hours for ASIG's employees. Carrier personnel direct and supervise ASIG employees. The Carriers require ASIG employees to follow their operating and training procedures. The Carriers have requested additional supervision of ASIG employees to correct service problems. Employee training is specified by the Carriers and recorded on Carrier forms. The Carriers have access to employees' training files and are not required to provide notice for audits. The Carriers' personnel report problems with ASIG's employees and these reports have resulted in discipline including reassignment, suspension and discharge. ASIG also complied with the Carriers' request not to hire certain individuals during its initial hiring. The Carriers have also rewarded ASIG employees for good performance, including providing an employee who prevented aircraft damage with two complimentary airline tickets.

The record shows that the Carriers exercise sufficient control over ASIG's employees to support a finding of RLA jurisdiction.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that ASIG and its employees at Detroit are subject to the RLA. This opinion may be cited as *Aircraft Service International Group, Inc.*, 31 NMB 361 (2004).

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson
General Counsel

Copies to:
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